STATE OF MICHIGAN

COURT OF APPEALS

LYNDA CARTO, JANE STAEBEL, JULIE McCARVER, PATRICIA SELENT, D. JEANETTE SULLIVAN, JULIA SNEAD, and THOMAS UNDERWOOD,

Plaintiffs/Counter-Defendants-Appellees,

and

THE JOHN G. UNDERWOOD TRUST,

Plaintiff/Counter-Defendant,

v

UNDERWOOD PROPERTY MANAGEMENT COMPANY,

Defendant/Cross-Defendant,

GLENN UNDERWOOD,

Defendant/Counter-Plaintiff/Cross-Defendant/Cross-Plaintiff-Appellant,

and

CHARLES UNDERWOOD,

Defendant/Counter-Plaintiff-Cross-Plaintiff/Cross-Defendant.

UNPUBLISHED
June 12, 2008

No. 272747
Oakland Circuit Court
LC No. 2004-056175-CB

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Defendant/counter-plaintiff/cross-defendant/cross-plaintiff, Glenn Underwood ("Glenn"), appeals as of right the trial court's opinion, order, and judgment granting summary disposition in

favor of plaintiffs/counter-defendants ("plaintiffs") on their breach of fiduciary duty claim against Glenn, granting plaintiffs summary disposition on Glenn's counter-complaint, granting Glenn summary disposition on plaintiffs' conversion and fraud claims, and awarding plaintiffs damages, following a bench trial. We affirm in part, vacate in part, and remand for further proceedings.

I. Basic Facts and Proceedings

Defendant/cross-defendant Underwood Property Management Company ("UPMC" or "the partnership"), a partnership that owned and managed numerous real estate properties, was formed by ten siblings. Glenn, plaintiff/counter-defendant Patricia Selent ("Selent"), and defendant/counter-plaintiff-cross-plaintiff/cross-defendant Charles Underwood ("Charles"), were appointed as managing partners. Section 2.4 of the partnership agreement prohibited partner compensation. However, Selent, who kept the books, compiled reports, maintained amortization schedules, managed accounts, paid taxes and other bills for the properties, collected land contract receivables, and cleaned and rented properties, was paid for her services until 1986, when she ceased being a managing partner. Although there was never a specific agreement to pay Glenn a particular wage for his services as a managing partner, he believed he was entitled to payment.

Glenn deposited a check from a land contract vendee for the partnership into his personal business account, and he transferred a partnership property to himself and conveyed it to his son without disclosure to the partners. Glenn entered into land contracts to acquire a partnership property on Lenore Street and one on Hillsboro and wrote off management fees as credits against the balances he owed while he was in default on these land contracts. Charles entered into a land contract to purchase a partnership property, and Glenn gave him the deed after collecting payment directly from him; Glenn then added the outstanding receivable to his balance on the Hillsboro property. In addition, Glenn used partnership funds to pay various personal creditors.

Between November 1981 and May 1998, Glenn also cared for John G. Underwood, one of the siblings and partners, who suffered from Down's Syndrome. Selent, as John's plenary guardian, received John's Social Security checks and paid Glenn $26 a day for John's room and board and care until October 1986. In October 1986, Glenn began paying himself from partnership accounts for John's care. In 2004, Glenn informed plaintiffs that he was dissolving the partnership.

Plaintiffs alleged claims against Glenn and Charles for breach of fiduciary duty, conversion, and fraud and misrepresentation. Plaintiffs also requested an accounting, dissolution of the partnership, and a temporary restraining order and preliminary injunction. In his counter-complaint, Glenn asserted claims against plaintiffs for breach of contract, unjust enrichment, and declaratory judgment. Plaintiffs moved for summary disposition on their breach of fiduciary duty claim against Glenn and on Glenn's counter-complaint. Glenn did not deny that he took money from the partnership; rather, he claimed that he was entitled to the money as compensation for his services as a managing partner and for the care, room, and board for John. Glenn moved for summary disposition on plaintiffs' claims for accounting, conversion, fraud, and misrepresentation. The trial court granted plaintiffs summary disposition on their breach of fiduciary duty claim against Glenn, finding that Glenn had written 125 checks as draws, totaling more than $800,000. The trial court also granted plaintiffs summary disposition on Glenn's counter-complaint and granted Glenn summary disposition on plaintiffs' conversion and fraud

claims. The trial court conducted a damages trial and found Glenn liable to plaintiffs for $392,752 as follows:

Item	**Amount**
advance draws (125 checks)	$800,000.00
endorsed partnership check	$15,000.00
rental income on land contracts (Lenore Street property & Hillsboro property)	$20,000.00
loan not repaid	$21,804.01
tree sale	$44,125.00
Subtotal – undisclosed and unapproved advance draws, payments to personal creditors, converted checks and loans, and rental income	$900,929.01
fair market value – Hudson Street property	$65,000.00
credit for caring for John ($467,000 available less $156,000 already paid himself)	($311,000)
Subtotal	$654,929.01
liable to plaintiffs for 60 percent	**$392,752**

II. Breach of Fiduciary Duty

Glenn argues that the trial court erred in granting plaintiffs summary disposition on their breach of fiduciary duty claim because plaintiffs never demanded information, Glenn had invited them to inspect the partnership's books and records, and plaintiffs had access to the partnership's books and records. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Zsigo v Hurley Medical Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). When reviewing a decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and other evidence in the light most favorable to the party opposing the motion. *Id*. Summary disposition is appropriately granted if, except for the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*.

MCL 449.20 imposes a duty on partners as follows: "Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability." Glenn asserts that, because plaintiffs never made a demand for information after 1986, there was a genuine issue of material fact regarding whether he breached his fiduciary duty. This Court has recognized that MCL 449.20 "has been broadly interpreted as imposing a duty to disclose all known information that is significant and material to the affairs or property of the partnership." *Band v Livonia Assoc*, 176 Mich App 95, 113; 439 NW2d 285 (1989); *Jaffa v Shacket*, 114 Mich App 626, 640; 319 NW2d 604 (1982). Moreover, MCL 449.21(1) provides that every partner is accountable as a fiduciary as follows:

> Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property[.]

In *Band*, *supra* at 113-114, this Court discussed the fiduciary duty of partners as follows:

> The courts universally recognize the fiduciary relationship of partners and impose on them obligations of the utmost good faith and integrity in their dealings with one another in partnership affairs. Partners are held to a standard stricter than the morals of the marketplace and their fiduciary duties should be broadly construed, "connoting not mere honesty but the punctilio of honor most sensitive." The fiduciary duty among partners is generally one of full and frank disclosure of all relevant information. Each partner has the right to know all that the others know, and each is required to make full disclosure of all material facts within his knowledge in any way relating to the partnership affairs. Thus, disclosure to one or several partners does not fulfill this duty as to every other partner. [Citations omitted.]

Glenn did not deny that he took money from the partnership; rather, he asserted that the money constituted payment for the services he provided to the partnership and for John's care. Glenn admitted that he paid himself $709,173.57 in advance draws from the partnership for

John's care, and Selent was only aware that he was taking $26 a day from partnership accounts for John's care. Glenn deposited a $15,000 check made payable to the partnership into his own personal business account. Without disclosure to the partners, he transferred a partnership property to himself, conveyed it to his son, and collected money that he did not turn over to the partnership. Without disclosure to the partners, Glenn wrote off management fees as credits against the balances he owed on his land contracts for the Lenore and Hillsboro properties when he was in default on these land contracts. Glenn collected a check from Charles for a partnership property, gave Charles the deed, and added the outstanding receivable to Glenn's balance on the Hillsboro property without disclosure or the partners' consent. A partnership check register and plaintiffs' "Summary of Checks Written to UPMC Partners" spreadsheet ("plaintiffs' spreadsheet") showed that Glenn paid his personal creditors out of partnership funds. There is no genuine issue of material fact that, pursuant to MCL 449.20 and *Band, supra* at 113-114, Glenn failed to disclose relevant information relating to the partnership affairs. Further, Glenn failed to account to the partnership for the benefits he received from the partnership without the other partners' consent, in violation of MCL 449.21(1). Therefore, the trial court did not err in granting plaintiffs summary disposition on their breach of fiduciary duty claim.

III. Statute of Limitations

Glenn argues that the trial court erred in granting plaintiffs summary disposition on their breach of fiduciary duty claim because it was barred by the statute of limitations. We disagree.

In granting plaintiffs summary disposition, the trial court did not specifically address Glenn's statute of limitations argument. Therefore, the issue is unpreserved, but this Court may review it because it is a question of law and the facts necessary for its resolution have been presented. *Detroit Free Press, Inc v Family Independence Agency*, 258 Mich App 544, 555; 672 NW2d 513 (2003). In the absence of disputed facts, we review de novo questions regarding the applicability of a statute of limitations. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006).

Because a breach of fiduciary duty claim sounds in tort, *Miller v Magline, Inc*, 76 Mich App 284, 313; 256 NW2d 761 (1977), the applicable limitations period is three years, *id.*; MCL 600.5805(10). Contrary to Glenn's assertions, a breach of fiduciary duty claim accrues when the plaintiffs knew or should have known of the breach. *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 47; 698 NW2d 900 (2005); *Bay Mills Indian Community v Michigan*, 244 Mich App 739, 751; 626 NW2d 169 (2001). The phrase, "knew or should have known," indicates that an objective standard applies when determining when a claim accrues. *Prentis Family Foundation*, *supra* at 47-48. "'A plaintiff is deemed to be aware of a possible cause of action when he becomes aware of an injury and its possible cause.'" *Id.*, quoting *Shawl v Dhital*, 209 Mich App 321, 325; 529 NW2d 661 (1995).

When the partnership was formed, the managing partners were Glenn, Charles, and Selent. There is no dispute that, in 1986, Selent ceased being a managing partner. Glenn asserts that, because Selent indicated a desire to sue him in 1986, she was aware of his possible breaches. However, her testimony merely indicates that she contemplated suing him in 1986 because he was failing to turn over information she needed to complete her tasks as managing partner. Therefore, Selent's expressed desire to sue Glenn on this basis does not indicate an awareness of possible subsequent causes of action.

As discussed *supra*, partners have an affirmative duty to disclose all material facts relating to partnership affairs to their partners. See MCL 449.20; MCL 449.21(1); *Band*, *supra* at 113-114. Selent admitted that Glenn told her he would pay himself $26 a day for John's care from partnership accounts when she stopped paying him directly in 1986, and she did not object. However, there is no dispute that Selent never agreed to pay Glenn anything other than $26 a day for John's care, Glenn never informed her that he was paying himself more than $26 a day, and Glenn never informed her that he was paying himself advance draws from John's partnership distributions. Further, there is no evidence that any plaintiffs knew or had reason to know that Glenn paid his personal creditors from partnership funds, paid himself management fees and issued himself credits against his personal land contract obligations to the partnership while he was in default on these obligations, deposited partnership funds into his personal business account, transferred property to himself and sold it to his son, or collected funds for the sale of partnership property and added this as an outstanding receivable against a personal obligation to the partnership.

None of the plaintiffs involved in this lawsuit were managing partners who were involved with keeping the books or managing the accounts. Although all partners had a right to demand information, Glenn has presented nothing that suggests that they had a duty to demand information. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Further, as Glenn acknowledges, all the partners were receiving "substantial monetary distributions each year[.]" Therefore, plaintiffs lacked notice of an injury, i.e., that Glenn had breached his fiduciary duty by paying himself advance draws. Glenn presented no evidence that plaintiffs were aware of a possible injury or its possible cause before they filed their complaint. See *Prentis Family Foundation*, *supra* at 47-48. Accordingly, reversal is not warranted on this ground.

IV. Modification of Partnership Agreement

Glenn contends that the trial court erred in granting plaintiffs summary disposition on his counter-complaint because a course of dealing or waiver of the partnership agreement permitted compensation for his services as a managing partner. We disagree.

MCL 449.18 provides, in pertinent part:

> The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by all of the following rules:
>
> * * *
>
> (f) A partner is not entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his or her services in winding up the partnership affairs.

In *Band*, *supra* at 117-118, this Court applied MCL 449.18(f), stating, "A partner is not entitled to compensation for services performed on behalf of the partnership unless the express terms of

the agreement provide for such compensation." Section 2.4 of the partnership agreement provides that "[n]o partner shall be entitled to receive any compensation from the Partnership, nor shall any Partner receive any drawing account from the Partnership."

It is well established that parties to a contract may, by mutual consent, modify a written contract. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006). Modification must be "established through clear and convincing evidence of a written agreement, oral agreement, or affirmative conduct establishing mutual agreement to waive the terms of the original contract." *Id.* at 455, quoting *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 373; 666 NW2d 251 (2003). Thus, parties may waive the terms of their initial contract by clearly expressing contradictory provisions or by an established course of conduct. *Id.* at 373-374.

Glenn asserts that the partners later agreed to compensate the managing partners for their services, as evidenced by several letters and plaintiffs' first amended complaint. The evidence shows that the partners agreed to pay $10 an hour for clerical duties or building repair. Selent received $10 an hour for her services as a managing partner, in addition to eight percent of all rents collected and $2.50 a month for each land contract receivable collected. The partners did not establish rates for other services performed by managing partners, and Glenn admitted that there was never an agreement to pay him $10 or any other specific wage or fee for his services as a managing partner. In his deposition, Glenn asserted that Selent's compensation at $10 an hour set a precedent for him to receive some payment for his services as a managing partner, but he conceded that it did not set a precedent for the amount of compensation. Therefore, there was no genuine issue of material fact that there was no agreement to modify the partnership agreement such that Glenn would be compensated for his services as a managing partner. The trial court properly granted plaintiffs summary disposition on Glenn's counter-complaint.

V. Damages

Glenn challenges several of the trial court's findings and damage awards following the bench trial. We agree with some of his contentions, as detailed below, and remand for further proceedings.

On appeal from a bench trial, this Court reviews a trial court's findings of fact for clear error and its legal conclusions de novo. MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). This Court also reviews the trial court's determination of damages for clear error. *Id.* at 513. A finding is clearly erroneous if, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* at 512. Further, this Court must give regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C).

Regarding damages, this Court has stated the following:

> A party asserting a claim has the burden of proving its damages with reasonable certainty. Although damages based on speculation or conjecture are not recoverable, damages are not speculative merely because they cannot be ascertained with mathematical precision. It is sufficient if a reasonable basis for computation exists, although the result be only approximate. "'[W]here injury to

> some degree is found, we do not preclude recovery for lack of precise proof [of damages]. We do the best we can with what we have.'" [*Berrios v Miles, Inc*, 226 Mich App 470, 478-479; 574 NW2d 677 (1997).]

A. Finding Regarding $800,000 and 125 Checks

First, Glenn argues that the trial court erred in finding that he had admitted that he wrote more than 125 checks, totaling more than $800,000, as draws without disclosure or plaintiffs' consent. We agree.

In ruling on the summary disposition motions, the trial court found, "Glen [sic] admitted that without disclosure or the consent of the Plaintiffs he wrote 125 checks as draws, totaling more than $800,000." In their motion for summary disposition on their breach of fiduciary duty claim, plaintiffs asserted that Glenn had admitted that, without disclosure or consent, he wrote more than 125 checks totaling $800,000 to himself as draws, and they submitted a check register for one of the partnership accounts and plaintiffs' spreadsheet. Plaintiffs' spreadsheet provides a total of $813,166.54 for "Glenn's Draws," but it also indicates that this total includes partner distributions. Further, the purpose for many of these amounts is identified as "disb" or "Disburse" (presumably disbursements), "comm" (presumably commissions), tree sales, "L/C," or simply a property name. Plaintiffs' spreadsheet contains a column for "Glenn's Personal Bills," totaling $63,960.46, and a column for payments to Glenn for John's care, totaling $151,501.74. We are unable to determine how these different figures are reconciled to arrive at $800,000, and plaintiffs have offered no explanation for their calculations. Plaintiffs' spreadsheet identifies checks from five different accounts, but only one account's check register is included in the lower court record. Additionally, plaintiffs repeatedly state, and the trial court held, that there were more than 125 checks, whereas plaintiffs' spreadsheet identifies well over 200 checks for Glenn's draws. Glenn denied that he took $800,000 in advance draws, but he admitted that he wrote checks to himself for $709,173.57 for John's care. Therefore, the lower court record does not support the conclusion that Glenn admitted he had paid himself more than $800,000 as draws. To the extent that the trial court determined, in granting plaintiffs summary disposition, that Glenn had admitted to taking $800,000 as draws, it erred.

In its opinion, order, and judgment, the trial court again stated Glenn had admitted to writing himself more than $800,000 in checks, and the court included $800,000 in its damages calculations. At trial, Glenn admitted that he had paid himself $709,173.57 for John's care, but he was not questioned about every check detailed in plaintiffs' spreadsheet, which provides a total of $813,166.54 in draws paid to Glenn. The following day of trial, the trial court asked Glenn how much he had actually paid himself, and his counsel responded, "It's about 800 [thousand], total paid to himself. Then there's money paid back." However, on the following page of transcript, Glenn again denied that he had been paid $800,000. Therefore, this statement is not an admission, and it does not constitute a stipulation, see *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 378-379; 521 NW2d 847 (1994), or a judicial admission, *Gojcaj v Moser*, 140 Mich App 828, 833-834; 366 NW2d 54 (1985). Given that the record does not support the trial court's finding that Glenn admitted to paying himself $800,000, we remand for a clarification or recalculation regarding this figure.

B. Check for $15,000

Glenn next contends that the trial court erred in separately including $15,000 in damages for a check that Glenn endorsed to himself because it was taken into account in calculating the $800,000 figure. Because we are unable to determine whether this amount was included in the $800,000 figure, we remand for clarification.

At trial, Glenn admitted that he endorsed a $15,000 partnership check from a land contract vendee of the partnership and deposited the funds into his personal business account. However, he claimed that it was an advance draw against John's distributions for care. Glenn included this check in his schedule of payments for John's care, but it is not included in the check register submitted by plaintiffs. Plaintiffs' spreadsheet contains the following notation, "*Plus $15,000.00 interest payment received [on] land contract note which was deposited into Glenn's personal account[,]" but we are unable to determine whether this was meant to be included in the column for "Glenn's Draws" or "Glenn's Other." The $15,000 payment was identified separately from the $800,000 amount in plaintiffs' motion for summary disposition, and testimony was presented separately at trial. However, given the uncertainty regarding the $800,000 figure and the fact that Glenn never specifically admitted to that amount, we remand for clarification regarding this amount as well.

C. Tree Sale

Glenn asserts that the trial court erred in including $44,125 as damages for a payment he made to himself for a tree sale because it was taken into account in the $800,000 figure. Because the trial court erred in calculating this figure and we are unable to determine whether it was included in the $800,000 figure, we remand for recalculation and clarification.

Glenn testified that, in 1998, the partnership received $73,800 for the sale of some trees, and each family member (including Glenn) except John received $3,000. Glenn paid himself and Charles $4,325 commissions without the other partners' consent and deposited the remaining $38,150. Glenn later wrote checks to himself in the amount of $38,150 without disclosure to plaintiffs. Glenn claims that this $38,150 was included in his $709,173.57 figure. Adding $38,150 and $4,325 yields a total of $42,475, which does not match the trial court's $44,125 figure. Further, plaintiffs' spreadsheet indicates that "Glenn's Draws" includes a $4,325 payment for "1/2 Tree Commission" in December 1997, and we are unable to determine whether this is the same tree sale commission at issue. Because our calculations differ from the trial court and we are unable to resolve whether this amount was included in the $800,000 figure, we remand for recalculation and clarification regarding this amount.

D. Credit for Payment of Partnership Expenses

Glenn challenges the trial court's denial of a credit for expenses he paid on the partnership's behalf. Because we are unable to determine how the trial court arrived at its conclusion that Glenn admitted that he had withdrawn all these amounts as advance draws or payments to his personal creditors, we remand for clarification regarding this determination.

At trial, Glenn submitted exhibit QQQ, a summary of payments he allegedly made on behalf of the partnership, totaling $114,710.90, and an additional $14,507.43 for property taxes

and $10,519.50 for attorney fees for litigation regarding partnership-owned property. Glenn also testified that he was seeking $11,929.47 for respite care, which is included in his summary of payments, and he claimed he was seeking reimbursement for a closing on a property at Clarkston Woods. Although no amount was independently identified for the closing, Glenn was asked whether he were seeking a total reimbursement of $22,448.97 for these two items, and Glenn agreed. After subtracting $11,929.47 from $22,448.97, the result is $10,519.50, the amount to which Glenn claims he is entitled as a reimbursement for attorney fees. At trial, Glenn reduced the $709,173.57 figure to $694,666.14 to account for $14,507.43 he had paid for the partnership in property taxes. The trial court concluded that, even assuming Glenn had paid these amounts on the partnership's behalf, he admitted that he had later withdrawn these amounts as "advance draws" or payments to his personal creditors.

At trial, Glenn admitted that, after the trial court issued the injunction, he opened a partnership account at Clarkston State Bank. He deposited $28,000 into this account, claiming that half of it was for John's care, but he was impeached with deposition testimony in which he had admitted that it was partnership money. He also deposited amounts totaling $35,000 as reimbursements to the partnership. Glenn admitted that he completely depleted the funds out of that account after the trial court issued the injunction. These amounts account for a portion of the items listed on Glenn's summary of payments. Therefore, the trial court's reliance on Glenn's violation of the injunction in denying reimbursement was partially proper.

Glenn testified that some of his deposits were made to keep his payments within John's ten percent partnership distributions and some were reimbursements. However, he later admitted that these reimbursements were repayments for items he had previously designated as "advance draws" for John's care. Glenn was unable to explain why he would need to repay money to which he was entitled as compensation, but rather claimed it was his method of accounting. Glenn made similar admissions regarding other payments that were contained within the $35,000 amount at Clarkston State Bank. Because Glenn was not challenged regarding all the items contained on his summary of payments, we are unable to determine how the trial court arrived at its conclusion that the entire $114,710.90 had been withdrawn or used to pay Glenn's personal creditors. We therefore remand for clarification regarding this determination.

E. Offset for John's Care

Glenn claims that the trial court erred in calculating his offset for John's care. We agree.

Plaintiffs do not dispute that Glenn is entitled to payment for serving as John's caregiver. Glenn argues that the amount of credit for the monies he already paid himself should be $110,162 ($26 a day for 4,237 days) rather than $156,000. Glenn cared for John from November 3, 1981, until May 8, 1998, and Selent testified that she paid Glenn $26 a day until October 1986 from John's Social Security payments. Although Glenn was paid in full for $156,000 for the entire period, the payments for November 1981 until October 1986 did not come from partnership accounts, and the trial court erred in deducting the entire $156,000 from John's partnership distributions. This amount should be reduced, and the offset should be increased accordingly. We remand for recalculation regarding this offset.

Glenn also contends that the amounts he had already received for John's care were included in the $709,173.57. Based on credibility, the trial court rejected this assertion because

many of the checks, deposit slips, and the check register showed that Glenn had designated these payments as loans or advance loans, or they contained a notation that they were to be reimbursed. In rejecting Glenn's credibility, the trial court also noted that Glenn paid himself after John entered the group home and after John's death, and failed to report any of this caregiver income on his income tax returns. The trial court also relied on Glenn's failure to keep his payments within John's partnership distributions and the fact that he distributed John's Social Security payments to the other partners and later claimed that he was entitled to the entire amount.

Nevertheless, the trial court found that Glenn was entitled to an adjustment to the $26 a day figure for John's care, but it rejected the estimates presented by Glenn's expert, Carl Simcox, because they were not based on adult foster care home rates. Accepting Glenn's testimony that John's cash distributions were meant to be available for John's care, the trial court found that he was entitled to $467,000 (John's partnership distributions), less the $156,000 he admitted he had already received, for a net setoff of $311,000. The evidence supports the trial court's determinations regarding Glenn's contradictions and credibility, and we must give regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). Accordingly, we conclude that the amounts Glenn already received for John's care were properly offset against the amounts he paid himself in advance draws, but we remand, as discussed, *supra*, for recalculation of the amount Glenn paid himself for John's care from partnership accounts.

F. Value of Services in Caring for John

Glenn asserts that John's partnership distributions of $467,000 were insufficient to cover John's expenses, and he should be compensated according to Simcox's estimates. We conclude that the trial court did not err in limiting Glenn's credit to the amount of John's partnership distributions.

Simcox opined that John's care would have cost between $970,000 and $1,552,000 if he had lived in an institutional setting and between $902,000 and $1,138,000 if his care had been provided by an outside home care company. The trial court rejected these estimates because Glenn cared for John in his home, which he had operated as a private adult foster care home. Without evidence of an estimate for the cost of an adult foster care home, the trial court determined that Glenn was entitled to the maximum amount available from John's partnership distributions, $467,000, which represents a substantial increase over the $26 a day rate. Glenn testified that the partners had all agreed that John's share of the partnership distributions was to be set aside for his care and maintenance. Glenn repeatedly admitted at trial that he was required to keep his payments within the amount of John's partnership distributions. Therefore, the trial court's decision to reject Simcox's estimates and award Glenn the remainder of John's available partnership distributions as a reasonable amount for his services, room, and board does not constitute clear error. MCR 2.613(C); *Alan Custom Homes*, *supra* at 512-513.

VI. Land Contracts

Glenn argues that the trial court erred in including damages of $20,000 for rental income and ordering the sale of the Lenore and Hillsboro properties. We disagree.

As discussed, *supra*, MCL 449.21(1) provides that every partner is accountable as a fiduciary as follows:

> Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property[.]

Further, "the cases involving a partner's breach of the fiduciary duty to their partners have been concerned solely with placing the wronged partners in the economic position that they would have enjoyed but for the breach." *Gilroy v Conway*, 151 Mich App 628, 637; 391 NW2d 419 (1986). In his depositions, Glenn admitted that he stopped making payments on both land contracts and wrote off management fees as credits against the balances. Glenn did not disclose his defaults or the credits to the other partners. At trial, he admitted that he had collected $10,000 in rent for the Hillsboro property and less than $10,000 in rent for the Lenore property when he was in default.

The partnership was deprived of Glenn's payments as a vendee, but Glenn received a $20,000 benefit from his use of partnership property. Therefore, the appropriate remedy is to restore the wronged partners to the economic position they would have enjoyed but for Glenn's breaches. The trial court accomplished this by ordering Glenn to repay the $20,000 in rents that he collected. Further, Glenn offers no authority for his assertion that this was an inappropriate remedy. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson*, *supra* at 243, quoting *Mitcham*, *supra* at 203. We are not persuaded that ordering Glenn to pay $20,000 constitutes clear error.

In arguing that the ordering the sale of the Lenore and Hillsboro properties was not an available remedy, Glenn relies exclusively on MCL 565.359, which provides:

> (1) A land contract mortgage may be enforced in accordance with any existing procedure for the enforcement of a real estate mortgage, including, without limitation, foreclosure by advertisement and judicial foreclosure. Upon completion of a foreclosure by advertisement or judicial foreclosure of a land contract mortgage and the expiration of the applicable redemption period, the successful bidder at foreclosure shall succeed to all of the mortgaged interests of the respective foreclosed vendor or vendee.
>
> (2) Other rights and remedies that may be available to a real estate mortgagee, including, without limitation, future advance mortgages, assignments of rents, or receiverships may, in a proper case, be applied in favor of a land contract mortgagee.
>
> (3) All remedies that existed before the effective date of sections 6 to 11 shall continue to apply. However, a land contract mortgage made pursuant to this act may, at the option of the land contract mortgagee, also be enforced as provided in this act.

Glenn's argument is misplaced. Plaintiffs filed a breach of fiduciary duty claim against Glenn and the trial court awarded damages in accordance with that claim. Glenn has presented nothing to support his assertion that this action was precluded simply because land contracts were involved. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson*, *supra* at 243, quoting *Mitcham*, *supra* at 203.

When Glenn defaulted on his land contract obligations and failed to disclose these defaults, the partnership was deprived of this income and the opportunity to find another source of income for the properties. By ordering the sale of the properties, the trial court provided that the partnership would receive the fair market value of the properties, and the proceeds would be divided among the partners, thus making them whole. Glenn did not present his land contracts to the trial court, and he has presented nothing to support his assertion that the trial court erred in ordering the sale of these properties along with all other partnership properties. We conclude that this was not clear error.

We affirm the trial court's grant of summary disposition to plaintiffs regarding their breach of fiduciary claim against Glenn and Glenn's counterclaim. We vacate the damages award and remand for recalculation and/or clarification as detailed in this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette